

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEAN RODRIGUEZ	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE B. BARNHART	:	
COMMISSIONER OF SOCIAL SECURITY	:	
ADMINISTRATION	:	NO. 04-4755

MEMORANDUM AND ORDER

Fullam, Sr. J.

January 26, 2006

In this Social Security disability case, the Chief Magistrate Judge has issued a report recommending that the Court grant Defendant's Motion for Summary Judgment and deny Plaintiff's, effectively affirming the decision of the Administrative Law Judge to deny benefits. After careful consideration of the record, the objections to the Report and Recommendation, and the oral arguments of counsel, I am satisfied that the ALJ's opinion is supported by substantial evidence.

The ALJ concluded that although Plaintiff suffers from "impairments which cause significant vocationally relevant limitations," R. 18, the impairments are not severe enough to prevent Plaintiff from working. The record supports this conclusion. Although there is some conflicting evidence as to the severity of Plaintiff's mental impairments, a number of reports, particularly the more recent ones, place Plaintiff at a level of "moderate" rather than "marked" impairment, providing

substantial evidence for the ALJ's conclusion. The ALJ also appropriately considered the opinion of a non-treating, non-examining physician, Dr. Friel, who testified that Plaintiff had mild to moderate limitations in activities of daily living. As the appeal decision noted, the ALJ found that Dr. Friel's testimony was supported by the opinion of the State agency psychological consultant, the narrative report of the psychological consultative examiner, and the previous treating psychiatrist. R. 19. Even if, as Plaintiff argues, Dr. Friel did not review Plaintiff's complete records, the additional material presents conflicting evidence of Plaintiff's condition. Furthermore, it appears that the ALJ had all of the records even if Dr. Friel did not.

The ALJ also acted within reason in rejecting the opinion of Dr. Olinga because that individual is not a physician, a psychiatrist, or a psychologist, but instead has an Ed.D (doctor of education) degree. Id. The ALJ did not reject Dr. Olinga's opinion for no reason or for the wrong reason, Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000), but because the ALJ found that Dr. Olinga was not qualified and that his records did not support a finding of marked or severe impairment.

Plaintiff's objections to the hypotheticals presented to the vocational expert reflect disagreement with the ALJ's conclusions regarding the level of impairment, which already have been

discussed. Plaintiff finally argues that there was a conflict between the testimony of the vocational expert and the Dictionary of Occupational Titles ("DOT"). The vocational expert testified that he eliminated jobs that required contact with the public, R. 93. Only one of the six jobs identified by the vocational expert arguably requires contact with the public (Clerical Office Helper); there were jobs identified to support the . After careful review of the record, the objections to the Report and Recommendation, and the oral arguments of counsel ALJ's conclusion that work existed in the local and national economy that Plaintiff could perform.

An order follows.

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AND NOW, this 26th day of January 2006, upon consideration of the parties' cross-Motions for Summary Judgment, and after review of the Report and Recommendation of M. Faith Angell, Chief United States Magistrate Judge, the objections to the Report and Recommendation, and the oral arguments of counsel, and for the reasons stated in the accompanying memorandum, it is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The Defendant's Motion for Summary Judgment is GRANTED.
3. The Plaintiff's Motion for Summary Judgment is DENIED.

BY THE COURT:

/s/ John P. Fullam

John P. Fullam, Sr. J.